

REMARKS

In the subject Office Action, claims 10-12 and 21 are noted as non-elected subject matter, with cancellation requested. In addition, claims 1, 2, 4-7, 9, 14, 16-17 and 20 have been rejected pursuant to 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 5,066,142 to DeFrank, et al. ("DeFrank") in view of U.S. Patent No. 6,236,880 to Raylman, et al. ("Raylman"). Claims 8 and 18-19 are also rejected on the above art, taken in further view of U.S. Patent No. 5,893,833 to Pompei, et al. ("Pompei"). Finally, claims 1-3, 6, 9, 13, 15, 17 and 20 have been rejected as unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,047,205 to Pompei ("Pompei II") in view of Raylman.

We note that the previous bases for rejection have been withdrawn in view of the new argument. Applicants have reviewed these new arguments and respectfully traverse. The claims, as presented, are neither disclosed nor suggested by the art of record. Please consider the following comments in support of this position.

Focusing first on the invention as expressed in the claims, we find a novel thermometer utilizing infrared detection to perform clinical temperature measurements. This is a highly specialized field, requiring considerations never addressed in most disciplines. For example, the detector is sensitized to infrared radiation, which is environmentally ubiquitous. This mandates careful waveguide design closely integrated to the controlling electronics. In this particular invention, a unique probe head is configured for engagement with the fixed probe tip of the thermometer in a disengageable mounting. Separate selectable probe head shapes may be exchanged depending on the temperature measurement site, with site-specific geometry determining the appropriate processing algorithm. Switch detectable head and orientation

information conjures the appropriate processing equations to effect accurate temperature measurement.

The foregoing features are in stark contrast to the IR thermometers of the cited references. As noted by the Examiner, DeFrank does not disclose a mountable/demountable probe head and does not disclose the switch as a head detector.

Indeed, the primary reference DeFrank is limited to teaching an IR thermometer having a fixed head and a disposable probe cover – where the thermometer detects the disposable elastic cover, but not the head. The disposable cover functions as a sanitary barrier. In sum, DeFrank fails to disclose or even discuss the problems or solutions to multi-site temperature measurement with IR detection.

The Raylman reference, newly relied on, does not, however, cure the defects of DeFrank, for two clear and separate reasons.

First Raylman is in a distinct technical field, solving a vastly different problem: detecting ionizing radiation introduced into a patient and, in particular, sentinel lymph nodes. This artificially created radiation is used to identify select lymph nodes, linked to disease detection. There is no appreciation or consideration of infrared detection and, even more general clinical temperature measurement. Accordingly, persons skilled in the art would not look to Raylman for improving IR thermometers. Simply stated, the proposed combination lacks support.

Perhaps even more compelling, efforts to introduce Raylman probe tips, as exchangeable probe heads for DeFrank would not lead to the present invention. Specifically, Raylman probe tips include separately configured detectors, *i.e.*, a first tip utilizes a CsI or CdZnTe detector for detecting gamma rays, a second tip utilizes a second detector for detecting beta particles and a

third for x-rays. While size variations are mentioned, it is in the context of detector geometry for ionizing radiation.

It is also important to recognize the differing nomenclature for each of the relevant systems. Raylman is discussing detachable tips, that include electronics and sensors embedded therein; DeFrank features a detachable disposable cover for acting as a sanitary barrier; and finally, the claimed invention is directed to a detachable probe head, protecting a single sensor assembly, and selectively shaped – in some instances – for use with a disposable cover in scanning different sites.

These variations cannot be logically “brushed aside” in framing a *prima facie* obviousness-type argument. A logically driven and motivated substitution between DeFrank and Raylman must be articulated that results in applicants’ inventive structure. Applicants respectfully submit that this has not been done. Simply stated, no support exists for substituting multiple tips with discrete detectors of Raylman with the single disposable cover (without a detector) of DeFrank.

The proposed combination of Pompei with Raylman is, of course, subject to the same arguments and logic as that expressed above. In addition, applicants’ previous challenge to combining Pompei’s funnel shape with DeFrank’s disposable cover remains valid and compelling. (See p. 4, Amendment dated January 17, 2003.) The proposed combination is counter to the precise invention of DeFrank, *i.e.*, a stretchable cover for sanitary operation.

It is respectfully submitted that the invention claimed here is novel and unobvious in view of the cited references. Accordingly, applicants believe that the above amendments place this case in condition for allowance which is respectfully solicited.

The Examiner is invited to contact the undersigned regarding any questions on the above
Remarks.


Enclosed herewith is a petition and fee for a two month extension of time within which to
respond to the instant Office Action. Please charge any insufficiency in the fee to Deposit
Account No. 08-2776.

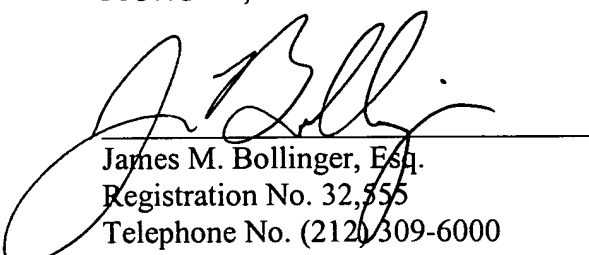
Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: September 10, 2003

I hereby certify that this correspondence is being deposited
with the United States Postal Service on September 10, 2003
as First Class Mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450, Alexandria,
VA 22313-1450.


Rosann Macchio


James M. Bollinger, Esq.
Registration No. 32,555
Telephone No. (212) 309-6000

CUSTOMER NO. 09629